



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/174199

PRELIMINARY RECITALS

Pursuant to a petition filed May 5, 2016, under Wis. Stat., §49.45(5)(a), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on June 22, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner's appeal of an HMO denial for bariatric surgery was untimely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
P.O. Box 6470
Madison, WI 53716-0470

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County who receives MA.
2. Petitioner's MA coverage is within the Security Health Plan HMO. In early 2016 her doctor requested MA coverage of bariatric surgery. By a letter dated February 25, 2016 the HMO denied coverage because petitioner's high risk health conditions were managed by standard treatment methods. The letter informed petitioner that she could appeal the denial, but had to do so within 45 days of the date of the letter.

3. Petitioner filed a grievance with the HMO on May 9, 2016. The HMO denied the request on May 12 because it was untimely.
4. Petitioner appealed to the Division of Hearings and Appeals on May 5, 2016.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCAA are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, the recipient can file the grievance or appeal the denial to the Division of Hearings and Appeals within 45 days. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3. If the person first files a grievance, she can appeal to the Division of Hearings and Appeals within 45 days of the grievance denial.

In this case petitioner did not file a grievance or an appeal within 45 days of the denial notice, and thus this office does not have jurisdiction to review the merits. Nevertheless, because of confusion over whether petitioner filed a grievance, the hearing went forward and evidence was taken regarding the denial. Petitioner presented four letters to the judge from her health care professionals in support of the surgery. I forwarded the letters to the Department's Chief Medical Officer for review to determine if the denial could be reversed at that level, as there is no jurisdictional impediment to the state office changing a decision.

On June 28, 2016 I received this response from the doctor: "The department is in the process of publishing new prior authorization guidelines which are expected this fall, wherein this patient would likely qualify with additional supporting clinical data. However, as it currently stands, she continues not to meet our current guidelines for a fee for service Medicaid coverage of bariatric procedures such that I am obliged to continue to uphold the HMO denial."

The current state policy is that bariatric surgery is denied if the person's high-risk (co-morbid) health conditions are being controlled with medication and other standard methods. However, petitioner's doctor should keep abreast of the changes expected this fall, and the surgery can be requested again.

CONCLUSIONS OF LAW

Petitioner's appeal of a denial of bariatric surgery was untimely.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of June, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 29, 2016.

Division of Health Care Access and Accountability